

Civil society public letter on the Council's proposed general approach to the Regulation of Political Advertising, calling for a Regulation that delivers for democracy and fundamental rights

Dear Mikuláš Bek, Minister for European Affairs,
EU Ministers for European Affairs,

We, the undersigned 34 civil society organisations, are writing to you to voice our deep concern regarding the Presidency's compromise text on the Regulation on the transparency and targeting of political advertising (COM(2021)0731) and the risks that it poses to democracy and fundamental rights in Europe.

In particular, the proposed text **(a)** dangerously mischaracterises the mere expression of political ideas and civic engagement as political advertising; **(b)** establishes a sanctions regime that applies to sponsors of political advertisements on ambiguous grounds; and **(c)** delays absolutely necessary measures to ensure the integrity of electoral processes in the EU and makes them conditional on evaluation and review exercises, including on restrictions on the use of personal data and transparency of political ads.

In order to ensure that the Regulation protects democracy and fundamental rights, it must:

Reasonably delineate the scope of political advertising. The proposal by the European Commission defines political advertising as the placement, promotion or dissemination of any message that features specific political messages, *regardless* of whether or not the publisher or disseminator of the message disseminates it on the basis of providing a service to a sponsor. The proposed Council compromise text reinforces and clarifies this approach, as recital 49 emphasises that political advertising may or may not be provided as a service.

This is deeply problematic on two different levels. First, it mischaracterises political speech on elections and political processes by individuals or civil society organisations as if it were a service, i.e. advertising. This would constitute an unacceptable precedent. It follows, secondly, that forms of civic participation that do not involve the use of advertising services are regulated as if they did involve the provision of this type of service. This would impose severe obligations on individuals and civil society and impair their ability to express views on political matters and hinder democratic discourse and public participation. Furthermore, service providers would likely be unable to apply the Regulation to publications that are not sponsored or promoted.

This Regulation must acknowledge the critical importance of civic voices for democracy and sharply distinguish it from political advertising, defining the latter as *always* involving a service.

Limit sanctions to providers of political advertising services: Effective, proportionate, dissuasive and harmonised sanctions are part of the bedrock of this Regulation and will be crucial for its success. However, the sanctions regime must balance the aim of dissuading malicious actors from covertly and unduly influencing political processes in the EU with the

need to establish the strongest possible safeguards to freedom of expression and information, including from measures that could cause a chilling effect across the Union.

Under the proposed compromise, sponsors of advertisements would be subject to sanctions. However, the text does not provide clear indications about which acts or omissions by sponsors ought to be sanctioned, leaving the responsibility to Member States to lay down the rules on sanctions. This will lead to individuals and civil society organisations to refrain from using advertising services, reducing the means with which they can reach the public and contributing to further risks of the acceleration of closing space for civil society in Europe. In Member States where democracy is under threat, the risks that this Regulation would create to civic space are even higher, particularly taken in conjunction with the elements highlighted above.

Alternatively, setting minimum instead of maximum harmonised sanctions only on service providers would result in effective, proportionate and dissuasive sanctions while also preserving freedom of expression and the civic space from unintended negative consequences.

Include ambitious measures to be implemented as soon as possible. The proposed postponement of the adoption of key measures to ensure the integrity of electoral processes in the EU until 2026, and the fact that their adoption is made conditional upon review and evaluation, is at odds with the findings of and the need for action by both European civil society and European authorities.

European [civil society organisations](#) and European institutions such as the [EDPS](#) have explained why restrictions to the [processing of personal data](#) (Article 12) in the context of the provision of political advertising services, including restrictions to the processing of observed and inferred personal data, are of paramount importance to ensure the integrity of elections in Europe. This is necessary to prevent data-driven voter manipulation, even the political playing field for election contestants and rebuild trust in democratic processes.

European regulators such as [ERGA](#) and European [civil society organisations](#) have raised concerns that, unless [ad repositories for all online political advertisements](#) are mandated, it will be impossible for journalists and other watchdogs to successfully monitor political campaigns in the online domain, allowing for opaquely funded and misleading online campaigns.

We sincerely hope that you will take the urgent steps in your responsible capacity to ensure that the concerns outlined in this letter are adequately addressed.

We remain available for an exchange with you to further discuss how the Council can ensure that its general approach to the Regulation on the transparency and targeting of political advertising enhances fundamental rights, democracy and the rule of law – the foundations on which the European Union is based.

Yours sincerely,

*European Partnership for Democracy
(EPD)*

Access Now

ACT Alliance EU

ARTICLE 19

*Asociația pentru Tehnologie și Internet
(ApTI)*

Avaaz

Bits of Freedom

Bulgarian Helsinki Committee

CEU Democracy Institute

*Centre for Democracy and Technology,
Europe Office*

Civil Society Europe

Civil Liberties Union for Europe (Liberties)

Coalizione Italiana Libertà e Diritti (CILD)

*DEMAS – Association for Democracy
Assistance and Human Rights*

Digitalcourage

Državljan D

Electronic Frontier Finland

Epicenter.works

European Center for Not-for-Profit Law

European Civic Forum (ECF)

European Digital Rights (EDRi)

European Youth Forum (YFJ)

*Förderverein Informationstechnik und
Gesellschaft Fitug e.V.*

Gong

Homo Digitalis

Hungarian Civil Liberties Union

Hungarian Helsinki Committee

info.nodes

IT-Pol Denmark

Panoptykon Foundation

Peace Institute, Ljubljana

Stiftung Neue Verantwortung (SNV)

Transparency International EU

Vrijschrift.org